

These are the tentative rulings for civil law and motion matters set for Friday, July 12, 2019, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, July 11, 2019. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: All telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER GLENN M. HOLLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 31, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0071617 Wells Fargo Bank, N.A. vs. Goss, Ha D.

Plaintiff's request for judicial notice is granted.

Plaintiff's motion for judgment on the pleadings is granted. The complaint states sufficient facts to constitute a cause of action against defendant, and defendant's deemed admissions admit to the material allegations of the complaint. Accordingly, judgment on the pleadings is appropriate. Code Civ. Proc. § 438(c)(1)(A). Judgment shall be entered in favor of plaintiff and against defendant Ha D. Goss in the principal sum of \$13,410.64, plus attorneys' fees of \$525, and costs of \$589.50.

2. M-CV-0072103 Patelco Credit Union vs. Morales, Jason Alan, et al

The motion to compel deposition is dropped in light of the notice of bankruptcy stay filed June 6, 2019.

3. S-CV-0022813 Koch & Bottini vs. Bell-Lashley, Amber Rochelle

Judgment debtor Amber Rochelle Bell-Lashley's motion to vacate renewal of judgment is denied. There is no proof of service in the court's file establishing proper and timely service of the motion on judgment creditor. Code Civ. Proc. § 683.170(b).

4. S-CV-0029600 Enviro-Buildings Systems, Inc., et al v. Galvacore, Inc., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

The receiver's order to show cause re contempt is dropped from the calendar.

There are two fatal defects that prevent the court from proceeding with an order to show cause hearing. First, defendant Jerry Ponzo was never personally served with the continuance of the OSC re contempt hearing. The continuance OSC was filed and served on June 17, 2019, informing the parties that the OSC re contempt hearing date was continued to July 11, 2019. The receiver's proof of service lists the original OSC re contempt but does not identify the continuance OSC re contempt as a document personally served on Mr. Ponzo. Personal service of the order to show cause must occur, otherwise the court lacks jurisdiction to proceed with the contempt arraignment hearing. (*Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1286-1287.)

Second, the receiver must present a sufficient affidavit setting forth the facts on which the contempt is charged. (Code of Civil Procedure section 1211.5.) It appears the issuance of the OSC was based upon the declaration of Greg Webster. Mr. Webster's declaration does not sufficiently identify the provisions of the January 9, 2019 allegedly violated by Mr. Ponzo or the number of contempt violations alleged against Mr. Ponzo. These omissions significantly impact Mr. Ponzo's ability to address the charges brought against him since the counts levied against him are not clearly outlined. Due to these significant deficiencies, the matter is dropped from calendar.

5. S-CV-0039919 Bains, Kuldip, et al vs. Lake, Denise Michelle

Motion to Dismiss the Action of Plaintiff Kuldip Bains

Defendant moves to dismiss the action of plaintiff Kuldip Bains, and for monetary sanctions.

Terminating sanctions are an extreme sanction for those cases where misuses of the discovery process are so pervasive that a less drastic sanction will not sufficiently address the discovery derelictions. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797. In light of the extreme effect of terminating sanctions, courts do not impose such a sanction lightly. Upon careful review of the moving papers and the court file, the court determines that terminating sanctions are appropriate in this instance. Defendant served plaintiff Kuldip Bains with discovery requests, including interrogatories and requests for production. Plaintiff failed to serve any responses. Defendant moved to compel responses which motion was unopposed and granted February 19, 2019. Defendant served plaintiff with notice of entry of the court's order on March 18, 2019. Plaintiff continues to refuse to serve responses to the outstanding discovery, despite the court's order, and filed no opposition to the instant motion.

Based on plaintiff's misuse of the discovery process and failure to comply with an order of the court, terminating sanctions are appropriate in this case. Pursuant to Code of Civil Procedure section 2023.030(d), plaintiff Kuldip Bains' action against defendant is hereby dismissed.

Defendant's additional request for monetary sanctions is denied.

Motion to Dismiss the Action of Plaintiff Harsimrat Bains

Defendant moves to dismiss the action of plaintiff Harsimrat Bains, and for monetary sanctions.

Terminating sanctions are an extreme sanction for those cases where misuses of the discovery process are so pervasive that a less drastic sanction will not sufficiently address the discovery derelictions. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797. In light of the extreme effect of terminating sanctions, courts do not impose such a sanction lightly. Upon careful review of the moving papers and the court file, the court determines that terminating sanctions are appropriate in this instance. Defendant served plaintiff Harsimrat Bains with discovery requests, including interrogatories and requests for production. Plaintiff failed to serve any responses. Defendant moved to compel responses which motion was unopposed and granted February 19, 2019. Defendant served plaintiff with notice of entry of the court's order on March 18, 2019. Plaintiff continues to refuse to serve responses to the outstanding discovery, despite the court's order, and filed no opposition to the instant motion.

Based on plaintiff's misuse of the discovery process and failure to comply with an order of the court, terminating sanctions are appropriate in this case. Pursuant to Code of Civil Procedure section 2023.030(d), plaintiff Harsimrat Bains' action against defendant is hereby dismissed.

Defendant's additional request for monetary sanctions is denied.

6. S-CV-0040139 Ponzio, Jerry J., et al vs. Hanifa, Muhammad Ibn Hakim, et al

The motion to compel further responses was continued to July 26, 2019, at 8:30 a.m. in Department 31.

7. S-CV-0040293 Thorn, Martha vs. Eaton, Stewart, et al

Defendant Stewart Eaton's motion to compel plaintiff's responses to discovery requests is denied as moot in light of plaintiff's representation that responses were served following the filing of defendant's motion. Defendant's request for sanctions is denied.

8. S-CV-0040667 Stiegmann, Douglas vs. Sunworks, Inc.

Motion for Summary Judgment and/or Summary Adjudication

Rulings on Objections to Evidence

Defendant's objections to the declaration of Douglass Stiegmann are ruled on as follows: Objection Nos. 3, 7, 9, 10, 16 (as to the first two sentences only), 17 and 18 (as to the first and last sentences only) are sustained. The remaining objections are overruled. Defendant's objections to Exhibits 1 and 2 to the declaration of Heywood Friedman are sustained.

Ruling on Motion

Defendant Sunworks, Inc. moves for summary judgment and/or summary adjudication as to the first amended complaint filed by plaintiff Douglass Stiegmann.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). The party seeking summary judgment bears the burden of showing there is no triable issue of material fact, and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Plaintiff alleges that defendant breached a contract between the parties entitled "Sunworks, Inc 1099 Independent Contractor Agreement" ("the Agreement") by refusing to pay compensation owed under the Agreement. (FAC, ¶ 36.) Plaintiff also seeks declaratory relief regarding defendant's continuing obligations under the Agreement. Schedule A of the Agreement describes "Work & Services" to be provided by plaintiff to include:

- 1) Contractor will conduct commercial solar PV sales calls.
- 2) Make first initial contact with customer.
- 3) Build a rapport and introduce Sunworks to the customer.
- 4) Collect 12 months usage bills and any other necessary Utility information for proposal purposes.
- 5) Site survey, including pictures of the site, roof, meter and switch gear.
- 6) Assist and coordinate with customer and Sunworks for the presentation.
- 7) Assist and coordinate for any contract signings, etc.

(Deft. SSUMF 7.) The Agreement provides that it will remain in effect "until the Work is completed and delivered to Client, or until terminated by Client by giving Contractor five (5) days written notice." (Deft. SSUMF 1, Exh. 1 at p. 3.) Section 9 of the Agreement provides that the compensation provision will survive termination of the Agreement. (*Id.*) The compensation provision states:

1) As compensation for the Work rendered by the Contractor under this Schedule A, Client shall pay the Contractor commission at a rate of \$0.10 per DC watt sold. Total amount of commission paid will be based upon the “final design” and approval of each project. ... Such compensation shall be due and payable to the Contractor within fifteen (15) days of receiving Contractor’s invoice for the work (“SUBJECT” TOO) Sunworks receiving its first construction draw down payment from the customer.

(Deft. SSUMF 1, Exh. 1. At p. 8.) Defendant verbally terminated the Agreement on or about March 20, 2017. (Declaration of Douglass Stiegmann (“Stiegmann decl.”), ¶ 43.)

Following execution of the Agreement, plaintiff effectuated a meeting between defendant and Aldi Foods. (Stiegmann decl., ¶ 21.) Ultimately, Aldi Foods agreed to contract with defendant, and defendant finalized four projects with Aldi Foods prior to termination of the Agreement. (Deft. SSUMF 9.) Following termination of the Agreement, defendant has continued to secure contracts with Aldi Foods in various locations. Plaintiff contends that pursuant to Section 9 of the Agreement, he is entitled to receive compensation for future projects with Aldi Foods finalized after termination of the Agreement. Defendant contends that plaintiff’s interpretation of the Agreement is unreasonable, and argues that under the terms of the Agreement, plaintiff would be required to perform all of the duties enumerated in Schedule A before he is entitled to compensation for any particular project.

Under statutory rules of contract interpretation, the mutual intent of the parties at the time of formation of the contract governs interpretation, so far as that intention is ascertainable and lawful. Civ. Code § 1636. Such intent is to be inferred, if possible, solely from the written provisions of the contract. Civ. Code § 1639. Where the parties disagree about the meaning of an integrated contract, the court must determine whether it is reasonably susceptible to the interpretation urged by the parties. *Consolidated World Investments, Inc. v. Lido Preferred, Ltd.* (1992) 9 Cal.App.4th 373, 379. This question can be determined from the language of the contract itself, or from extrinsic evidence of the parties’ intent. *United Teachers of Oakland v. Oakland Unified School Dist.* (1977) 75 Cal.App.3d 322, 330; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165. The contract is ambiguous if it is susceptible to more than one reasonable interpretation. *Oceanside 84, Ltd. v. Fidelity Fed. Bank* (1997) 56 Cal.App.4th 1441, 1448.

Upon review of the Agreement, the court finds that it is ambiguous, and susceptible to more than one reasonable interpretation. The Agreement does not expressly state that compensation will be owed for a particular project only if plaintiff completes each of the seven tasks set forth in Attachment A. A review of the entirety of the Agreement does not necessarily establish this requirement, or foreclose plaintiff’s interpretation. Further, the course of conduct of the parties after execution of the Agreement, and prior to its termination, does not lend support to defendant’s interpretation. Plaintiff states that for the Aldi Foods projects finalized prior to termination of the Agreement, Items 4 and 5 were superfluous and not performed, yet defendant never suggested that plaintiff was not owed compensation for these projects, while at the same time increasing the amount of plaintiff’s allowed monthly draws and planning with plaintiff for future projects with Aldi Foods. (Stiegmann decl., ¶ 39, Exhs. 8, 9.) At no time prior to termination of the Agreement, or even at the time the Agreement was terminated did defendant inform plaintiff that he was not

entitled to commissions from the four finalized projects with Aldi Foods based on his failure to perform all items set forth in Schedule A. (Stiegmann decl., ¶ 39.)

Because the Agreement is ambiguous regarding whether plaintiff would be entitled to compensation if he performed some, but not all, of the items listed in Schedule A, it is susceptible to varying interpretations regarding Section 9, which states that the compensation provision will survive termination of the Agreement. While defendant asserts that plaintiff did not and could not perform all of the “Work & Services” set forth in Schedule A for projects completed after termination of the Agreement, it must concede that Items 1, 2 and 3, conducting sales calls, making first initial contact with the customer, and building a rapport and introducing defendant to the customer, are tasks previously performed by plaintiff which remain applicable to Aldi Foods projects finalized after termination of the Agreement. As noted above, the Agreement is susceptible to the interpretation that plaintiff would still be entitled to compensation even if he did not perform one or more of the items stated in Schedule A. This, coupled with the express statement in the Agreement that the compensation provision survives termination, renders the Agreement susceptible to the interpretation urged by plaintiff, that plaintiff would continue to be entitled to compensation for future Aldi Foods projects for which he had already conducted sales calls, made first initial contact, built a rapport and introduced defendant to the customer.

As the Agreement is ambiguous, reference may be made to extrinsic evidence and surrounding circumstances to resolve the ambiguity. Civ. Code § 1648; *Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 435. In support of its interpretation of the agreement, defendant offers evidence that defendant’s practice never involved giving an independent contractor such as plaintiff a perpetual commission, and that if it had intended to do so, it would have included other express language such as “in perpetuity: or “finder’s fee” in the Agreement. (Declaration of Abe Emard, ¶ 5.) In opposition, plaintiff offers evidence regarding discussions with defendant’s representatives during contract negotiations, which purportedly informed the decision of the parties to include a provision that compensation would survive termination. (Stiegmann decl., ¶¶ 8-18.)

The court finds that a triable issue of fact exists regarding interpretation of ambiguities existing in the Agreement. Accordingly, defendant’s motion for summary judgment, or in the alternative, summary adjudication, is denied.

9. S-CV-0041333 1-888-4Abatement, Inc. vs. Chernoff-Pate, Diana

Plaintiff’s motion to compel discovery, compel deposition, and deem requests for admission admitted is granted.

Defendant Diana Chernoff-Pate shall serve verified responses to form interrogatories, set one, and request for production of documents, set one, within 10 days of service of notice of entry of the court’s order on this motion. Plaintiff’s request for admissions, set one, are deemed admitted. Defendant shall appear for her deposition at the date, time and location duly noticed by plaintiff.

Plaintiff is awarded sanctions in the amount of \$860 from defendant. Plaintiff's request for terminating sanctions is denied.

10. S-CV-0041499 Speedboat JV Partners, LLC vs. Capital One, N.A.

The demurrers to second amended complaint are continued to July 26, 2019, at 8:30 a.m. in Department 31.

11. S-CV-0041759 Whitney, Shawn vs. Finley, Janet Patricia

The motion for leave to file anti-SLAPP motion is continued to July 26, 2019, at 8:30 a.m. in Department 31.

12. S-CV-0042098 Z Brothers Investment, LLC vs. City of Auburn

The petition for administrative writ was continued by stipulation of the parties to July 26, 2019, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones.

13. S-CV-0042357 King, Ted Arthur vs. Tarver, Russell Lee

Defendant Russell Tarver's motion to release subpoenaed documents is granted. The documents received by the court from the Sacramento City Police Department in response to the subpoena dated April 19, 2019, shall be released to defendant Russell Tarver.

14. S-CV-0042425 Legrand-Sawyer, Mary Kathleen vs. U.S. Bank Nat'l Ass'n

The parties' requests for judicial notice is granted.

Plaintiff's renewed motion for consolidation is denied.

There are several procedural deficiencies with plaintiff's motion. The notice of motion fails to comply with California Rules of Court, rule 3.350. The notice does not list all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record. Cal. R. Ct., rule 3.350(a)(1)(A). The notice does not contain the captions of all cases sought to be consolidated. Cal. R. Ct., rule 3.350(a)(1)(B). The notice was not filed in each case sought to be consolidated. Cal. R. Ct., rule 3.350(a)(1)(C). The motion does not include a proof of service. Cal. R. Ct., rule 3.350(a)(2)(C). Counsel for defendant U.S. Bank National Association ("U.S. Bank") states that their office was never served with the motion. It appears that plaintiff's reply brief was served only on counsel for U.S. Bank in the unlawful detainer action, but not counsel for U.S. Bank in this action.

The motion is invalid as a renewal motion under Code of Civil Procedure section 1008(b) as it does not include a declaration from the moving party stating what applications were previously made, when and to what judge the applications were made, what orders or decisions were made, and what new or different facts, circumstances or law are claimed to be shown. Code

Civ. Proc. § 1008(a). As noted by U.S. Bank, the current motion is plaintiff's fourth request to consolidate the instant civil action with the pending unlawful detainer action against plaintiff.

Even if the court were to consider the merits of plaintiff's request, which it does not, the motion would still be denied. As "new or different facts", the moving papers cite to a lengthy request for judicial notice filed by U.S. Bank, as well as the answer filed by plaintiff in the unlawful detainer action. U.S. Bank's prior request for judicial notice requested judicial notice of recorded documents relating to the subject property, and filings in plaintiff's prior bankruptcy actions. Plaintiff fails to demonstrate that the existence of these documents was unknown to her, or could not, with reasonable diligence, have been presented at the prior hearings. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. Nor does plaintiff's filing of a responsive pleading in the unlawful detainer action evidence "new or different facts" which plaintiff was unable to offer earlier. To the extent plaintiff's reply includes any "new or different facts", such facts would not be considered as defendant has no opportunity to respond.

For all of the foregoing reasons, the motion is denied.

15. S-CV-0042453 Hooper, Gary vs. Gloria, Jimmy

Plaintiff's motion for trial preference is denied without prejudice. The proof of service indicates that the motion was not served with sufficient notice pursuant to Code of Civil Procedure section 1005(b).

16. S-CV-0042635 Skyline Oak LLC vs. Worthington, John

Plaintiff's motion for leave to file first amended complaint and reclassify unlimited civil case to limited civil case is granted. Plaintiff shall file and serve its first amended complaint on or before July 26, 2019. Pursuant to Code of Civil Procedure section 403.040(d)(1), the clerk shall reclassify this case as a limited civil case. No reclassification fee is required. Code Civ. Proc. § 403.040(c)(2).

17. S-CV-0043095 Handal, Remy T. vs. Iliescu, Constantin M.

Plaintiff's application for right to attach order and writ of attachment against defendant Constantin M. Iliescu is granted. An attachment may issue if the claim sued upon is based upon a contract, for a fixed or readily ascertainable amount not less than \$500, that is unsecured or secured by personal property, and that is a commercial claim. Code Civ. Proc. § 483.010. Damages must be measurable by reference to the contract itself, and the basis for computing damages must be reasonable and certain. *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 541.

Based upon the court's review of the plaintiff's application, and the declarations submitted in support of the application, the court finds pursuant to Code of Civil Procedure section 483.010 that plaintiff has established the probable validity of the claim upon which the attachment is based, and that attachment is not sought for an improper purpose. Plaintiff is granted the right to attach property of defendant Constantin M. Iliescu in the amount of \$540,000.

The court notes that the application identifies certain property of defendant which may not be attached pursuant to Code of Civil Procedure section 487.010(c). Pursuant to Code of Civil Procedure section 487.010(c), plaintiff may attach the following property of defendant: (1) interests in real property except leasehold estates with unexpired terms of less than one year; (2) accounts receivable, chattel paper, and general intangibles arising out of the conduct by the defendant of a trade, business, or profession; (3) equipment; (4) final money judgments arising out of the conduct by the defendant of a trade, business, or profession; (5) deposit accounts; (6) negotiable documents of title; (7) instruments; and (8) securities.

Plaintiff must file the required undertaking of \$10,000. Code Civ. Proc. § 489.220. Upon the filing of the undertaking the clerk shall issue a writ of attachment in the amount of \$540,000 for the above-described property.

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